IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.07.2007

CORAM:
THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.29181 of 2004

V. Lakshmanan Petitioner

vs.

1 The Chairperson & Managing Director
Small Industries Development Corporation
Regd. Office: Paulwel's Road
Kathipara Junction
Chennai - 600 016

2 The Branch Manager
Small Industries Development Corporation
Sivagangai Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus as stated therein.

For petitioner Mr. S. Anil Sandeep
for M/s. Menon & Gokalaney

For respondents Mr. M.M. Sundresh

O R D E R

By filing this writ petition, the petitioner has sought a writ of mandamus directing the respondents to execute a Sale Deed in his favour in respect of the property, namely, Shed Nos.10 and 11 in the Industrial Estate, SIDCO, Paramakudi and all necessary documents that may be necessary for proper conveyance in his favour.

2. The petitioner's case, in brief, is as under:

a. Earlier, one Selvam, Janab S.M. Malik and the petitioner were carrying on a partnership business and pursuant to the retirement of Janab S.M. Malik, the firm was re-constituted by a new partnership deed dated 03.10.1992 in the name and style of "Ashok Paper Boards" at Plot Nos.10 & 11 at the Industrial Estate, SIDCO, Paramakudi Taluk, Ramnad District which premises was allotted in 1989. Since the venture was not a profitable one, Selvam retired from the firm and a Dissolution Deed also was executed to this effect and consequently, the petitioner became the sole proprietor of the business.

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b. Since no response emanated on the application dated 12.10.1994 made by the petitioner to the first respondent for re-scheduling of payments in respect of sheds allotted to the business, the petitioner filed a writ petition in W.P. No.18682 of 1994 before this Court in which a direction was given to the respondents herein to consider the said representation. Accordingly, the first respondent issued an order dated 06.11.1995 demanding a sum of Rs.4,21,645/- with Interest @ 13.5% per annum payable on or before 31.12.1995 and the petitioner too, made a payment of Rs.4,26,080/- including Interest in favour of SIDCO in full settlement of the arrears.

c. Pursuant to the above payment, the first respondent had issued a memo dated 21.03.1996 to the second respondent authorising the latter to execute a Sale Deed in favour of the petitioner's business. Even upon payment of Rs.4,26,080/- demanded by the first respondent and after issuance of a memo by the first respondent to the second respondent authorising the latter to execute the Sale Deed, since the sale deed was not executed in favour of the petitioner's business premises, the petitioner sent a legal notice to the first respondent but in vain.

d. In the meanwhile, three institutions namely District Industries Centre, Ramanathapuram, National Small Industries Corporation Ltd., Madurai and REPCO Bank, Chennai had sent letters to the first respondent stating that certain amounts are due to them from Ashok Paper Boards and hence, the sale of petitioner's business premises can be effected only when the petitioner effects payment to them. Since there was a series of correspondence inter se between the above three authorities and the respondents, the second respondent stopped executing the Sale Deed based on the same and hence, the present writ petition.

3. The strong contention of Mr. S. Anil Sandeep, learned counsel for the petitioner is that when the first respondent had specifically addressed a Memo to the second respondent directing execution of sale deed in favour of the petitioner's premises, the second respondent cannot take a stand that the sale deed cannot be executed as there are dues payable by the petitioner to various institutions.

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4. Mr. M.M. Sundresh, learned counsel for the respondents, per contra, has contended that the reconstitution of the petitioner's business from partnership to proprietorship and vice versa was done without the approval of the respondents and the partners have in fact mortgaged the business premises for availing sanction of working capital from Paramakudi Urban Cooperative Bank without the knowledge of the respondents and the action of the respondents in withholding execution of sale deed is justifiable.

5. I have given due consideration to the arguments made by the learned counsel on either side.

6. The facts that (i) the nomenclature of the business was changed from time to time, (ii) the petitioner had made a payment of Rs. 4,21,645/- which was outstanding to the respondents, (iii) the first respondent had issued a Memo to the second respondent directing the latter to execute the sale deed in favour of the petitioner's business firm, and (iv) these three institutions have written to the first respondent not to execute the sale deed in favour of petitioner's business are not disputed.

7. It is seen that the property in question has been mortgaged for availing sanction of working capital from Paramakudi Urban Cooperative Bank. It is also seen that the petitioner had availed business loan from (i)District Industries Centre, Ramanathapuram, (ii) National Small Industries Corporation Ltd., Madurai and (iii) REPCO Bank, Chennai and for these reasons, execution of sale deed has been withheld by the respondents.

8. Undoubtedly, if the execution of sale deed is carried out by the respondents, the property in question will be a free and independent property of the petitioner. In such a case, the three agencies which raise objection in respect of execution of sale deed of the property, can very well proceed against the petitioner to recover the dues payable to them by initiating appropriate proceedings before the appropriate forum for which purpose, they may even seek to attach the property in question. Thus, it is clear that the execution of the sale deed by the respondents cannot be kept pending for the reason that the three Governmental agencies have raised their objections in this regard.

9. Admittedly, one of the terms and conditions of the allotment order stipulates that a sale deed should be executed for the shed allotted to the petitioner. At this stage, it is to be borne in mind that the issue of sale deed execution is purely between the petitioner and the respondents and this has no nexus or relevance to the three Governmental agencies which are standing in the way of the execution of sale deed in favour of the petitioner. To put it in other words, the apprehension of the three Governmental agencies cannot stand in the way of the respondents in executing a sale deed in favour of the petitioner. In that view of the matter, the contention of the counsel for the respondents that the three Governmental agencies have objected to execution of sale deed and the sale deed can be executed only in

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the event of the petitioner settling the dues payable to them, cannot be sustained.

10. Taking note of the facts and circumstances of the case and the discussion made above, this Court directs the respondents to execute a sale deed in favour of the petitioner in respect of Shed Nos.10 and 11 in the Industrial Estate, SIDCO, Paramakudi, and all other documents which may be necessary for proper conveyance in favour of the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. However, it is made clear that this order shall, in no way, preclude the three Governmental agencies, viz., District Industries Centre, Ramanathapuram, National Small Industries Corporation Ltd., Madurai and REPCO Bank, Chennai from initiating appropriate legal proceedings against the petitioner for recovery of amounts due to them in accordance with law.

In the result, the writ petition stands allowed with the above observation. No costs.

cad

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To
1 The Chairperson & Managing Director
Small Industries Development Corporation
Regd. Office: Paulwel's Road
Kathipara Junction
Chennai - 600 016

2 The Branch Manager
Small Industries Development Corporation
Sivagangai
3. The District Industries Centre, Ramanathapuram.

4. The National Smalla Industries Corporation, Madurai
5. The REPCO Bank, Chennai.
+ 2 cc to M/s Menon & Gokleney, Associates SR 44817
+ One cc to Mr. M.M. Sundares Advocate sR 45017
RS (co)
sg 30/7/07

order in
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